

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
APR 12 2004

METAL BUILDING
COMPONENTS, L.P.,

Plaintiff,

vs.

CIV-04-0256 MV/DJS

JOE ALLEN CAPERTON,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Order Allowing Entry and Inspection of Land and Tangible Things, filed April 12, 2004, [Doc. No. 35]. In an Order dated April 2, 2004, the Court found that Plaintiff had demonstrated good cause to expedite entry upon Defendant's property located at 802 11th Street, Eunice, New Mexico, to determine the quantity of its property in Defendant's possession. The Court, therefore, shortened the period for Defendant to serve his written response to Plaintiff's request for entry upon his property from the thirty days provided in Federal Rule of Civil Procedure 34(b) to seven days.

It appears that Defendant filed a written response to the April 2, 2004 Order rather than a written response to Plaintiff's discovery request. *See* Defendant's Response to Orders, filed April 9, 2004 [Doc. No. 34]. The Court has reviewed Defendant's response and finds that it provides no basis to delay Plaintiff's inspection of Defendant's property. Defendant did raise a legitimate concern that any sampling or testing of the metal building components on his property could damage or destroy his property. The Court therefore will limit Plaintiff's inspection to photographing and inventorying the metal building components present on Defendant's property.

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No destructive sampling or testing will be permitted.

IT IS HEREBY ORDERED that Plaintiff's Motion for Order Allowing Entry and Inspection of Land and Tangible Things, filed April 12, 2004, [Doc. No. 35] is hereby **GRANTED**. Beginning at 9:00 a.m. on Wednesday, April 14, 2004, and continuing until complete, Plaintiff and/or Plaintiff's agents will be allowed entry to Defendants' property and structures at 802 11th Street, Eunice, New Mexico to inspect, photograph and inventory any and all metal building components thereon.

Dated this 12th day of April, 2004.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE